

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BOBBIE LEE SIMS, JR.,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
DONALD T. VAUGHN, et al.,	:	
Defendants.	:	No. 03-CV-6379

MEMORANDUM AND ORDER

J. M. KELLY, J.

MARCH , 2004

Presently before the Court are two motions styled, Motion for Reconsideration and Motion to Correct the Records, filed by pro se Plaintiff Bobbie Lee Sims, Jr. ("Plaintiff"). On November 21, 2003, Plaintiff filed a Complaint, which was dismissed by this Court's December 9, 2003 Order directing the Clerk of Court to statistically close this case for Plaintiff's failure either to pay the \$150.00 filing fee to commence this civil action or to submit a motion to proceed in forma pauperis.¹ On December 30, 2003, Plaintiff filed a motion requesting that this Court reconsider its December 9, 2003 Order, disputing the fact of non-payment.²

Plaintiff's motion for reconsideration, however, fails to

¹ In an effort to educate Plaintiff as to court procedure, this Court attached a notice of filing requirements to its December 9, 2003 Order.

² Plaintiff avers that a relative, a Ms. Pamela Johnson, did forward the check for his filing fee to the Clerk's Office on or about November 13, 2003. However, further investigation reveals that the Financial Manager of the Clerk's Office does not have record of receiving a filing fee for this suit as averred by the Plaintiff.

overcome the jurisdictional hurdle set forth in the Federal and Local Rules of Civil Procedure requiring that motions for reconsideration be served and filed within 10 days of the entry of judgment. Fed. R. Civ. P. 59(e) ("Any motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment."); E.D. Pa. R. 7.1(g) ("Motions for reconsideration . . . shall be served and filed within ten (10) days after the entry of the judgment, order, or decree concerned."). As Plaintiff's Motion for Reconsideration, filed on December 30, 2003, was filed over ten days after the entry of this Court's December 9, 2003 Order, Plaintiff's Motion for reconsideration was untimely under the 10-day period prescribed by Rule 59(e), as calculated pursuant to Rule 6(a), of the Federal Rules of Civil Procedure.³

Plaintiff's Motion for Reconsideration (Doc. No. 5) is therefore **DISMISSED AS UNTIMELY.**

³ Rule 6(a) states in pertinent part: "When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation." Fed. R. Civ. P. 6(a). Thus, Plaintiff had until December 23, 2003 to timely file his Motion for Reconsideration.

Since Plaintiff dated his Motion for Reconsideration on December 25, 2003, that date represents the earliest date in time that Plaintiff may be deemed to have delivered his Motion to prison officials for delivery. Thus, the time to file had run on Plaintiff's Motion for Reconsideration even before he presented it to prison officials, and as such, the prison mailbox rule does not apply. See Smith v. Evans, 853 F.2d 155, 156 (3d Cir. 1988) (applying Houston v. Lack, 487 U.S. 266 (1988) (considering prisoners' papers as filed on the date delivered to prison officials)).

As this case is closed as of December 9, 2003, Plaintiff's Motion to Correct the Records (Doc. Nos. 8, 9), which also addresses the absence of a filing fee payment, is **DISMISSED AS MOOT**.

Since this Court did not dismiss this suit with prejudice on December 9, 2003, we strongly advise Plaintiff to file a new complaint with the appropriate filing fee attached, so that his claims may be properly before the Court. Any statute of limitations applicable to Plaintiff's claims in this matter **SHALL BE TOLLED** from the date Plaintiff filed his Complaint, November 21, 2003, until this date.

BY THE COURT:

JAMES MCGIRR KELLY, J.